

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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LUKE MATTHEWS, :  
 :  
 : Petitioner, : 05 Civ. 4599 (SHS) (DF)  
 :  
 : -against- : **REPORT AND**  
 : **RECOMMENDATION**  
 : JAMES CONWAY, Superintendent :  
 : Attica Correctional Facility, :  
 : Respondent. :  
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**TO THE HONORABLE SIDNEY H. STEIN, U.S.D.J.:**

On September 11, 2008, this Court issued an Order (Dkt. 17), directing petitioner Luke Matthews (“Petitioner”) to show cause within 30 days of that Order why the Court should not recommend that his petition for a writ of habeas corpus, filed pursuant to 28 U.S.C. § 2254, be dismissed as barred by the applicable statute of limitations, contained in 28 U.S.C. § 2244(d)(1). In the Court’s Order, a copy of which is attached hereto, the Court set forth a calculation of the limitations period in this case, and explained why it appeared that the petition had not been timely filed. The Court noted, however, that respondent James Conway, Superintendent of the Attica Correctional Facility (“Respondent”) had not sought dismissal on statute-of-limitations grounds, and thus the Court considered it appropriate to afford Petitioner, who is proceeding *pro se*, an opportunity to respond to the Court’s analysis, prior to the Court’s issuance of a recommendation of dismissal.

More than 30 days have now passed since the date of this Court’s Order To Show Cause, and Petitioner has not responded to that Order. Accordingly, and for the reasons stated in the Order, I hereby recommend that the petition in this action be dismissed *sua sponte* as untimely.

Further, I recommend that the Court decline to issue a certificate of appealability pursuant to 28 U.S.C. § 2253(c)(1)(A), because Petitioner has not “made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed. R. Civ. P. 6. Such objections, and any responses to objections, shall be filed with the Clerk of Court, with courtesy copies delivered to the chambers of the Honorable Sidney H. Stein, United States Courthouse, 500 Pearl Street, Room 1010, New York, New York 10007, and to the chambers of the undersigned, United States Courthouse, 500 Pearl Street, Room 525, New York, New York, 10007. Any requests for an extension of time for filing objections must be directed to Judge Stein. FAILURE TO FILE OBJECTIONS WITHIN TEN (10) DAYS WILL RESULT IN A WAIVER OF OBJECTIONS AND WILL PRECLUDE APPELLATE REVIEW. *See Thomas v. Arn*, 474 U.S. 140, 155 (1985); *IUE AFL-CIO Pension Fund v. Herrmann*, 9 F.3d 1049, 1054 (2d Cir. 1993); *Frank v. Johnson*, 968 F.2d 298, 300 (2d Cir. 1992); *Wesolek v. Canadair Ltd.*, 838 F.2d 55, 58 (2d Cir. 1988); *McCarthy v. Manson*, 714 F.2d 234, 237-38 (2d Cir. 1983).

Dated: New York, New York  
October 20, 2008

Respectfully submitted,

  
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DEBRA FREEMAN  
United States Magistrate Judge

Copies to:

Hon. Sidney H. Stein, U.S.D.J.

Mr. Luke Matthews  
95-A-6848  
Great Meadows Correctional Facility  
PO Box 51  
Comstock, NY 12821-0051

Brian J. Pollock, Esq.  
Assistant District Attorney  
Bronx County  
198 East 161st Street  
Bronx, NY 10451